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Emergency Steel Guarantee Loan Board

13 CFR Part 400

RIN: 3003-ZA00

Emergency Steel Guarantee Loan Program; Participation in Unguaranteed Tranche

AGENCY: Emergency Steel Guarantee Loan Board

ACTION: Final rule.

SUMMARY: The Emergency Steel Guarantee Loan Board (Board) is amending the regulations governing the Emergency Steel Guarantee Loan Program (Program). These changes are meant to clarify the regulations applicable to certain types of loan participations. The intent of these changes is to make explicit the Board's position with respect to participations in wholly unguaranteed tranches of loans that are guaranteed under the Program.

DATES: This rule is effective [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Marguerite S. Owen, General Counsel, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Room H2500, Washington, D.C. 20230,

(202) 219-0584.

**SUPPLEMENTARY INFORMATION:** On October 27, 1999, the Board published a final rule codifying at Chapter 4, Title 13, Code of Federal Regulations (CFR), regulations implementing the Program, as established in Chapter 1 of Public Law 106-51, the Emergency Steel Loan Guarantee Act of 1999 (64 FR 57932).

Section 400.210 sets forth terms and conditions governing assignment or transfer of loans and interests in loans between and among eligible lenders. This rule adds a new section 400.210a to make clear that certain types of participations in unguaranteed portions of loans are not transfers or assignments to a lender under the regulations, though a lender can participate in an unguaranteed portion of a loan. Further, this rule sets forth the terms and conditions governing participation in an unguaranteed tranche of a loan guaranteed under the Program. It does so by describing categories of entities that may act as participants without Board approval and providing that other entities may act as participants with Board approval. This rule also contains a requirement for a minimum percentage of the unguaranteed portion of a guaranteed loan that a lender is required to hold without participation.

**Administrative Law Requirements:**

**Executive Order 12866**

This final rule has been determined not to be significant for purposes of Executive Order 12866.

**Administrative Procedure Act**

This rule is exempt from the rulemaking requirements contained in 5 U.S.C. § 553 pursuant to authority contained in 5 U.S.C. § 553(a)(2) as it involves a matter relating to loans. As such, prior notice and an opportunity for public comment and a delay in effective date otherwise required under 5 U.S.C. § 553 are inapplicable to this rule.

#### Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. § 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. § 601 et seq., are inapplicable.

#### Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. § 801 et seq.

#### Intergovernmental Review

No intergovernmental consultations with State and local officials are required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

#### Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

#### Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Summary Impact Statement.

#### Executive Order 12630

This rule does not contain policies that have takings implications.

#### List of Subjects in 13 CFR Part 400

Administrative practice and procedure, Loan Program—Steel, Reporting and recordkeeping requirements.

Date:

Daniel J. Rooney

Executive Secretary

Emergency Steel Guarantee Loan Board

For the reasons set forth in the preamble, 13 CFR part 400 is amended to read as follows:

1.The authority citation for part 400 continues to read as follows:

Authority: Pub. L. 106-51, 113 Stat. 255 (15 U.S.C. 1841 note).

New section 400.210a is added to read as follows:

§ 410.210a      Participation in unguaranteed tranche of guaranteed loan.

(a)      Subject to paragraphs (b) and (c) of this section, a Lender may distribute the risk of a wholly unguaranteed tranche of a loan guaranteed under the Program by purchase of participations therein from the Lender if:

- (1)      neither the loan note nor the Guarantee is assigned, conveyed, sold, or transferred in whole or in part;
- (2)      the Lender remains solely responsible for the administration of the loan; and
- (3)      the Board's ability to assert any and all defenses available to it under the Guarantee and the law is

not adversely affected.

(b) The following categories of entities may purchase participations:

- (1) Eligible Lenders;
  - (2) private investment funds and insurance companies that do not usually invest in commercial loans;
  - (3) steel company suppliers or customers, who are interested in participating in the unguaranteed tranche as a means of commencing or solidifying the supplier or customer relationship with the borrower;
- or

(4) any other entity approved by the Board on a case-by-case basis.

(c) The Agent must maintain and may not grant participations in an interest in the unguaranteed portion of the loan, which as a percentage of the Agent's overall interest in the loan, is no less than the aggregate percentage of the loan which is not guaranteed. Every Lender, other than the Agent, must maintain and may not grant participations in an interest in the unguaranteed portion of the loan representing no less than five percent of such Lender's overall interest in the loan, except as otherwise provided in § 210(c)(3) of this part.